

# Islamic Law and Muslim Minorities

On 23 May 2003, the ISIM organized a 'farewell seminar' for its academic director Muhammad Khalid Masud on the topic of *fiqh al-aqalliyat*, Islamic law for Muslim minorities. Léon Buskens, chairing the seminar, showed how this theme fitted neatly into Masud's research interests: as an expert in the field of Islamic law, Masud has always been particularly interested in the contemporary interpretation and implementation of Muslim legal traditions. Muslim minorities in the West deal with daily questions on issues such as dietary laws, mixed marriages, divorce, political participation, banking transactions, or the use of credit cards, for which religious legitimization, a normative order, is sought. This happens not only in European countries where Muslims form a minority as a result of migration, but also in Bosnia, where Muslims constitute an indigenous population, as Ahmed Alibasic showed.

Religious authorities within and outside of Europe and international fatwa bodies (comprised of both European and non-European scholars), for example the European Council for Fatwa and Research (ECFR) presided by Yusuf al-Qaradawi, deal with the formal adaptation of *shari'a* as a *fiqh* for minorities in the West. Here, Masud detected a paradoxical situation, because Muslim jurists cannot think of *fiqh* without an Islamic state, while in Europe *fiqh* is inherently without a state. As Dilwar Hussein said, *fiqh* can be an essential part in the daily life of practising Muslims living in the West, but laws of the nation-states differentiate between what is religious and what is legal. Studying *fiqh al-aqalliyat* then becomes relevant not only from an empirical perspective – people deal with questions which come up in local and national political and social settings, to which fatwas are given – but also as an academic discipline in the general study of law. Mahmood Saifi, who looked at *fiqh al-aqalliyat* on a more theoretical level, called it 'a new area of jurisprudence'. Ihsan Yilmaz discerned a *neo-ijtihad*.

## Terminology

The conference started with an exposé by Masud on the meaning of *fiqh al-aqalliyat* and soon it appeared that the participants shared a dose of scepticism regarding the terminology. One reason is, as Sjoerd van Koningsveld explained, that many books on *fiqh al-aqalliyat* are written by Muslim scholars living in the Muslim world, who themselves widely differ in their fatwas. They tend to refer to Muslims in the West 'as if they are an exception, but it does not touch their sacrosanct ideas of Islamic state and society'. Thus, he said, we are dealing with a normative, not a descriptive term. Much of this literature should be seen as apologetic and aimed at demonstrating that Muslim migrants have the tools to remain committed to their faith. Another reason stressed by several participants – most articulated by Nasr Abu Zayd – is that although it is called *fiqh* of minorities, many of the topics are heavily discussed in the Muslim world as well. This brings us to the question of the audience. Participants in the seminar not only looked at the level of the 'production' of *fiqh* by scholars, but also at the level of the 'consumption', as Alexandre Caeiro argued. He stressed that a distinction should be made between 'public fatwas', like from the ECFR, and 'private fatwas'. These 'private' (or local) fatwas allow for more interaction between the mufti and the *mustafti* (who asks for a fatwa), while a fatwa from the ECFR has to reach a wide and diverse audience. Moreover, these fatwas are often the result of long negotiations in order to satisfy the varied views represented in councils.

**In recent years, *fiqh al-aqalliyat*, or Islamic law for Muslim minorities, has incited a great deal of interest among Muslim scholars. The growth of *fiqh al-aqalliyat* as a topic of debate is a recognition of the relevance of Islamic law for a considerable number of Muslims living in non-Muslim countries, in particular in the West. It has revealed the complexities that Muslims face in reconstructing such laws in the context of migration and post-migration. Traditional Islamic law lacks provisions for Muslims living permanently in non-Muslim countries. *Fiqh al-aqalliyat* is an attempt to fill this gap and to reconstruct an Islamic legal theory to deal with questions of Islamic law for Muslims living under non-Islamic legal systems.**

## Authority

The question of authority on a local level appeared to be a difficult matter to evaluate. Van Koningsveld suggested to study *fiqh al-aqalliyat* in three stages: first, an identification of the relevant materials and analysis of their content; second, a comparative analysis of models of different scholars and their publications and ideas; and third, a social and cultural analysis. Lena Larsen disagreed with the proposed sequence, stressing that one should first look at how the needs for religious legitimization emerge, and then trace how *fiqh* is developed by scholars. However, all participants agreed that one should look not only at the macro-, supranational level, but also at the normativity on the local level. Frank Peter, for example, addressed the question of the links between individuals and religious authorities. Matthias Rohe took the constitutional rights of the German legal state as point of departure in which certain questions come up and ask for a normative religious answer.

Maleiha Malik, who acted as respondent of the sessions, concluded that the study of *fiqh al-aqalliyat* should not be a mere adjunct in Europe when dealing with problems that accompany migration, but should be a serious academic discipline because legal theory has to think of the break-off of the nation-state. She pointed to a main analogy in the European context: the development of European Union law. Khalid Masud seems to have succeeded in his call for greater attention to this new emerging field. One of the objectives of the ISIM is the start of a network of scholars working on the subject.



Participants at the ISIM Roundtable

PHOTO: MARY BAKKER, 2003

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## PARTICIPANTS

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- **Mohammad Amer** (ISIM)
- **Abdullahi an-Na'im** (Emory University, Atlanta)
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- **Léon Buskens** (Utrecht University/Leiden University)
- **Alexandre Caeiro** (EHESS, Paris)
- **Nathal Dessing** (ISIM)
- **Dick Douwes** (ISIM, seminar convenor)
- **Dilwar Hussain** (Islamic Foundation, Leicester)
- **Sjoerd van Koningsveld** (Leiden University)
- **Lena Larsen** (Oslo University)
- **Maleiha Malik** (King's College, University of London)
- **Muhammad Khalid Masud** (ISIM/Leiden University)
- **Frank Peter** (Freie Universität Berlin)
- **Ruud Peters** (University of Amsterdam)
- **Susan Rutten** (Universiteit Maastricht)
- **Mathias Rohe** (Erlangen University)
- **Mahmoud Saifi** (Leiden University)
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